

MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL
MARCH 1, 2011

The regular meeting of the Newton City Council was held on Tuesday, March 1, 2011 at 7:00 p.m. in the Council Chambers at City Hall

PRESENT: Mayor Robert A. Mullinax, Mayor Pro Tem Anne Stedman, and Council Members Robert C. Abernethy, Jr., Wayne Dellinger, Mary Bess Lawing, Tom Rowe, and Bill Lutz.

STAFF: City Manager Todd Clark, City Attorney Larry Pitts, City Clerk Amy S. Falowski, City Department Heads, and members of the Management Team.

ITEM 1. CALL TO ORDER – MAYOR ROBERT A. MULLINAX:

Mayor Robert A. Mullinax welcomed everyone, and called the meeting to order.

ITEM 2. OPENING – GLENN J. PATTISHALL:

Planning Director/Assistant City Manager Glenn J. Pattishall provided the invocation, and led the audience in the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTES FROM THE FEBRUARY 15, 2011 REGULAR CITY COUNCIL MEETING:

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That the Minutes of the February 15, 2011 Regular City Council Meeting be – APPROVED.

ITEM 4. CONSIDERATION OF CONSENT AGENDA ITEMS:

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That the Consent Agenda be – APPROVED.

A. Tax Refund – February 2011

The following tax refund is recommended for approval.

Tax Year	Tax Refund Number	Name	Reason	Amount of Release
2009	*1	Inter-Continental Corporation	Listing and payment error made by taxpayer	\$6,624.00

B. Consideration of work session on March 15 at 6:00 p.m. to discuss Water/Sewer Rate Structures.

5. COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):

Mayor Mullinax asked if there was anyone present that would like to make any comments concerning non-agenda items.

Kent Crow, attorney representing Sherry Butler in Item 7A, stated that he would like to ask that the City Council not levy a fine against his client.

Mayor Mullinax asked Mr. Crow if he would mind to wait until Item 7A, and Mr. Crow stated that he did not mind.

Michael Willard, Publisher of the Observer News Enterprise, challenged the Newton City Council to participate in this year's Newton-Conover Education Foundation's Red Hot Spelling Bee.

6. PUBLIC HEARING:

A. Zoning Ordinance Text Amendment #2010-03 – Accessory Structures

Assistant Planning Director Alex Fulbright stated that the Newton City Council at its February 1, 2010 meeting requested that a Public Hearing be held to consider Zoning Ordinance Text Amendment 2010-03 Residential Accessory Structures. Notice of the Public Hearing was published twice in the Observer News Enterprise as required. Mr. Fulbright stated that the Planning Commission had recommended the proposed amendment and requested that the City Council adopt the proposed Zoning Ordinance Text Amendment.

Mayor Mullinax opened the Public Hearing, as scheduled and advertised, and asked if there was anyone present that would like to speak in favor of or against the proposed Zoning Ordinance Text Amendment.

William Powell, of 1662 Nottingham Drive, voiced his concerns about the text amendment having unclear language. An example of this, according to Mr. Powell, was that the language seemed to indicate that the accessory structure size was based more on the size of the home, or the footprint of the home, than on the lot size. Also, he was under the impression that the original intent of the amendment was to address appearance, and he could not find any language in the amendment that specifically addressed appearance.

Augie Kotlewski, of 2135 Old Startown Road, questioned whether or not existing accessory structures would be grandfathered into the new Zoning Ordinance. Mr. Alex Fulbright told him that yes, existing structures would be grandfathered in. Council Member Bill Lutz asked if a structure was destroyed by fire or natural cause, could it be re-built the same if it was a non-compliant, grandfathered structure. Mr. Fulbright told him that it could not.

Mayor Mullinax asked if there was anyone else present that would like to speak. No one appeared and Mayor Mullinax CLOSED the Public Hearing.

After some discussion among the City Council it was unanimously RESOLVED:

That there be NO ACTION TAKEN on Zoning Ordinance Text Amendment #2010-03 – Accessory Structures at this time and directed staff to evaluate the discussion of council and to come back to council at a later date with revisions for council to consider with regard to the text amendment language.

B. Street Closing Petition – Portion of Berkshire Drive

Planning Director Glenn Pattishall stated that on January 3, 2011, a Street Closing Petition was received from Carolyn Stokes on behalf of herself and Stokes & Stokes LLC to close a portion of Berkshire Drive. The City Council at its February 1, 2011 meeting received a report from staff on the petition and determined to adopt a Resolution of Intent ordering the Clerk to advertise for a Public Hearing for March 1, 2011 on the question of closing a portion of the street as petitioned.

Mr. Pattishall stated that the notice has been published in the Observer News Enterprise, that the street has been posted and that notice was mailed certified to the adjoining property owners in accordance with NC General Statute 160A-299.

Mr. Pattishall explained that this statute requires that City Council may adopt an order closing a street or alley if satisfied after a Public Hearing that closing a portion of the street is not contrary to the public interest and that no individual owning property in the vicinity of the street or alley in the subdivision which the street is located would be deprived of any reasonable means of ingress and/or egress of his property. Mr. Pattishall requested that the City Council, if satisfied after the public hearing, adopt the Resolution to order the closing of a portion of Berkshire Drive as petitioned.

Mayor Mullinax opened the Public Hearing, as scheduled and advertised, and asked if there was anyone present that would like to speak in favor of or against the proposed street closing. No one appeared and Mayor Mullinax CLOSED the Public Hearing.

Upon motion duly made by Council Member Bill Lutz, seconded by Council Member Wayne Dellinger, it was unanimously RESOLVED:

That Resolution 07-2011 - Ordering the Closing of a 0.584 Acre Portion of Berkshire Drive be - ADOPTED.

(Resolution 7-2011 is hereby referenced and on file in the office of the City Clerk)

Resolution # 07-2011

Street Closing Order

A RESOLUTION ORDERING THE CLOSING OF A 0.584 ACRE PORTION OF BERKSHIRE DRIVE.

WHEREAS, on the first day of February, 2011, the City Council of the City of Newton directed the City Clerk to publish a notice that the City Council would consider closing the following portion of Berkshire Drive:

Beginning at a point located on the southern edge of the 50' right-of-way of Berkshire Drive, said point being a #4 rebar located N 67°34'38" E – 64.08' from the North East Corner of Lot #32 of the Village of Newton as recorded in Plat Book 49 Page 199, from said beginning point following the 50' right of way of Berkshire Drive, N 67°34'38" E – 54.56' to an existing #4 rebar, thence continuing with the 50' right of way, N 67°34'38" E – 71.25' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 37.37', chord N 67°28'32" E – 37.35'

to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 96.57', chord
N 51°51'32" E – 96.16' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 82.40', chord N 34°59'58" E – 82.15' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 94.46', chord N 18°20'19" E – 94.08' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 92.32', chord N 00°44'36" E – 91.97' to an existing #4 rebar located at the end of the right-of-way of Berkshire Drive, thence with the end line of said right-of-way, N 70°25'05" W – 57.39' to an existing #4 rebar located along the Northern Edge of Berkshire Drive, thence following the northern edge of Berkshire Drive S 10°21'11" E – 15.91' to an existing #4 rebar, thence continuing with the 50' right-of-way and following a curve with radius 254.11', curve length of 101.96', chord S 01°08'34" W – 101.28' to an existing #4 rebar, thence continuing with the 50' right-of-way and following a curve with radius 254.11', curve length of 226.44', chord
S 38°09'58" W – 219.02' to an existing #4 rebar, thence continuing with the 50' right-of-way and following a curve with radius 254.11', curve length of 17.22', chord S 65°38'13" W – 17.22' to an existing #4 rebar, thence continuing with the 50' right of way, S 67°34'42" W – 128.04' to an existing #4 rebar, thence crossing the 50' right of way, S 22°25'22" E – 50.00' to the point of beginning, containing 0.584 Ac± of 50' right-of-way of Berkshire Drive to be closed.

Notice of the proposed street closing was published in the Observer News Enterprise once each week for four successive weeks, such notice advising the public that a public hearing would be conducted in Newton City Hall on March 1st , 2011 at 7:00 pm ; and

WHEREAS, the Newton City Council on the first of February, 2011, ordered the City Clerk to notify all persons owning property abutting on the portion of the street identified above and as shown on County tax records, by registered or certified mail, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Assistant City Clerk has advised the Newton City Council that he sent a letter to each of the said abutting property owners advising, them of the day, time and place of the meeting, enclosing a copy of the Resolution of Intent, and advising said abutting property owners that the question as to closing that street would be acted upon; said letters having been sent by certified mail; and

WHEREAS, the Assistant City Clerk had advised the Newton City Council that adequate notice was posted on the applicable street as required by G.S. 160A-299; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of said street in the public hearing held on March 1st , 2011 at 7:00 pm; and

WHEREAS, it now appears to the satisfaction of the Newton City Council that the closing of a portion of said street is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of said street, will as a result of said closing be thereby deprived of a reasonable means of ingress and egress to his property;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, DECREED AND RESOLVED that the following described portion of said street, located in the City of Newton, Catawba County, North Carolina be hereby closed:

Beginning at a point located on the southern edge of the 50' right-of-way of Berkshire Drive, said point being a #4 rebar located N 67°34'38" E – 64.08' from the North East Corner of Lot #32 of the Village of Newton as recorded in Plat Book 49 Page 199, from said beginning point following the 50'

right of way of Berkshire Drive, N 67°34'38" E – 54.56' to an existing #4 rebar, thence continuing with the 50' right of way, N 67°34'38" E – 71.25' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 37.37', chord N 67°28'32" E – 37.35' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 96.57', chord N 51°51'32" E – 96.16' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 82.40', chord N 34°59'58" E – 82.15' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 94.46', chord N 18°20'19" E – 94.08' to an existing #4 rebar, thence continuing with the 50' right of way and following a curve with radius 304.11', curve length of 92.32', chord N 00°44'36" E – 91.97' to an existing #4 rebar located at the end of the right-of-way of Berkshire Drive, thence with the end line of said right-of-way, N 70°25'05" W – 57.39' to an existing #4 rebar located along the Northern Edge of Berkshire Drive, thence following the northern edge of Berkshire Drive S 10°21'11" E – 15.91' to an existing #4 rebar, thence continuing with the 50' right-of-way and following a curve with radius 254.11', curve length of 101.96', chord S 01°08'34" W – 101.28' to an existing #4 rebar, thence continuing with the 50' right-of-way and following a curve with radius 254.11', curve length of 226.44', chord S 38°09'58" W – 219.02' to an existing #4 rebar, thence continuing with the 50' right-of-way and following a curve with radius 254.11', curve length of 17.22', chord S 65°38'13" W – 17.22' to an existing #4 rebar, thence continuing with the 50' right of way, S 67°34'42" W – 128.04' to an existing #4 rebar, thence crossing the 50' right of way, S 22°25'22" E – 50.00' to the point of beginning, containing 0.584 Ac± of 50' right-of-way of Berkshire Drive to be closed.

IT IS FURTHER ORDERED that the City of Newton specifically reserves all its right, title and interest in any utility improvements or easements within the portion of the above street closed hereby pursuant to G.S. 160A-299(f). Nothing contained in this Order shall affect the 25 foot sanitary sewer easement shown on the plat recorded in book____

Page_____ of the Catawba County Registry, extending from the northern termination point of the street closed hereby in an easterly direction to a major sanitary sewer outfall line.

The City Clerk is hereby ordered and directed to file in the office of the Register of Deeds of Catawba County a certified copy of this resolution and order.

Upon motion duly made by Council Member Lutz, and duly seconded by Council Member Dellinger, the above resolution and order and duly adopted by the Newton City Council held on the first day of March, 2011, in the Newton City Hall.

Upon call for a vote, the following Council Member(s) voted in the affirmative:

Mayor Pro Tem Anne Stedman

Council Member Tom Rowe

Council Member Mary Bess Lawing

Council Member Robert C. Abernethy, Jr.

Council Member Wayne Dellinger

Council Member Bill Lutz

And the following voted in the negative: None

Adopted this first day of March, 2011

7. OLD BUSINESS:

A. Consideration of Assessment of Penalty for Violation of Soil Erosion, Sedimentation Control Ordinance

Kent Crow, Attorney for the property owner, Sherry Butler, stated that he would like to ask that the City Council not levy a fine against his client. Mr. Crow explained that Ms. Butler, through her contractor Tim McCaslin, obtained a Zoning Clearance Permit on April 29, 2009 from the City of Newton, and began construction on a new single-family residential dwelling at 1215 Knolls Drive. Mr. Crow stated that in December of 2009 Ms. Butler received a Certificate of Occupancy from Catawba County. Mr. Crow quoted North Carolina General Statutes 160A-423 and 153A-363, and stated that according to these statutes Catawba County was responsible for maintaining Certificate of Compliance, and that his client relied on this assumption.

Mr. Crow further stated that in January, 2010, because of substantial snow and rain, mud began to move onto a neighboring lot to 1215 Knolls Drive and that said neighbor complained that there was mud on their property and in their swimming pool. Mr. Crow explained that a Code Technician from Catawba County had inspected the property on December 31, 2009, and that the report stated that there was no evidence of erosion, and recommended that the mulch on the site be spread to prevent future erosion. Mr. Crow stated that in January, 2010, after it was realized that the site was located in the Newton Extra Territorial Jurisdiction, Ms. Butler received a letter of non-compliance from the City of Newton. Mr. Crow maintained that his client believed that she was in compliance due to the fact that Catawba County had issued a Certificate of Occupancy.

City Attorney Larry Pitts reminded Mr. Crow that this is not a Public Hearing, and that a Building Permit from Catawba County had nothing to do with an Erosion Control Permit along with an Erosion Control Plan and a Grading Permit that should have been obtained from the City of Newton.

Mr. Crow stated that his client, Ms. Butler, via contractor, obtained a Grading permit from the City of Newton on January 14, 2010. Mr. Crow stated that Ms. Butler was not willfully non-compliant, and again asked the City Council to not levy a penalty against her.

Planning Director Glenn Pattishall stated that the City of Newton administers a Local Erosion Control Program, which is a State delegated authority to regulate grading activity on construction sites. All grading activity, despite size, must adhere to industry standard best-management-practices (BMP's) to prevent sediment from damaging adjacent property and/or entering surface waters.

When grading occurs that will disturb more than ½ acre, but less than 1.0 acre, a Grading Permit must be obtained prior to the commencement of construction. This permit is usually accompanied by a site plan that shows the general limits of disturbance and the locations and types of BMP's to be used.

When grading occurs that will disturb 1.0 acre or more, an Erosion Control Permit must be obtained prior to the commencement of construction. This permit must include an Erosion Control Plan designed and sealed by a professionally licensed engineer (PE). There are also additional inspection and maintenance requirements of the permittee that must be adhered to through the duration of the project.

Mr. Pattishall stated that on April 29th, 2009, a Zoning Clearance Permit was obtained to construct a new single-family residential dwelling at 1215 Knolls Drive. At that time, Staff explained the City's Soil Erosion & Sedimentation Control regulations with the applicant's representative and informed him that a

separate grading permit must be obtained if the total disturbed (graded) area would exceed 20,000 square feet. Neither a Grading Permit nor an Erosion Control Permit was obtained.

After receiving a complaint, a site inspection conducted on January 6th, 2010 revealed that the limits of disturbance exceeded 20,000 square feet. The property owner was notified of the violations and on January 14th, 2010, the owner obtained a Grading Permit for the site. The permit application disclosed that the area of disturbance was less than 1.0 acre.

On February 17th, 2010 a follow up inspection was conducted to verify the information submitted in the Grading Permit and to ensure that Best Management Practices were being followed. At that time, Staff measured the disturbed area, which revealed the actual limits of disturbance to be 1.25 acres. Subsequent to this inspection, a Notice of Violation (NOV) was issued outlining violations of the State's Sedimentation Pollution Control Act.

To satisfy the requirements of the Ordinance and bring the site into compliance, the NOV required the owner to do three things:

1. To submit an "after the fact" Erosion Control Permit application with all applicable fees;
2. To submit a report from a licensed engineer which prescribes measures to be taken that will adequately retain sediment on the site; and
3. Establish ground cover on exposed slopes.

Over the next 30 days, Staff did receive the required engineer report and significant progress had been made to establish ground cover. However, on July 7th, 2010, a Notice of Continuing Violation was issued after the owner failed to submit formal application and did not complete the work necessary to establish ground cover on all exposed areas of the site.

Therefore, Staff is submitting a recommendation to assess civil penalties pursuant to Section 82-20(a)(1) of the Soil Erosion and Sedimentation Control Ordinance. This provision allows for a civil penalty to be assessed up to \$5,000 per day from the date of original Notice of Violation (2/18/10). However, after adjusting for the required considerations, Staff is recommending a daily penalty of \$450 for each day from the Notice of Continuing Violation (7/7/10). After applying the daily penalty of \$450 from the date of the Notice of Continuing Violation issued on July 7th through September 6, 2010, the total recommended penalty comes to \$27,900.

Mr. Pattishall recommended that Council determine the amount of the civil penalty to be assessed under subsection 82-20(a)(2) for violations of the North Carolina Sedimentation Pollution Control Act found at 1215 Knolls Drive.

Mayor Pro Tem Anne Stedman stated that the recommended penalty seemed very high to her. Council Member Robert C. Abernethy, Jr. agreed, and added that this is not personal and that the City would be setting a precedent if a fine was not levied when someone was in violation of the Local Erosion Control Program. Mayor Pro Tem Stedman agreed and stated that the Council must assess a penalty.

Mayor Mullinax stated that the City Council of Newton elected to enforce erosion control, and if the City doesn't, then the State may retract the City's ability to enforce the Erosion Control Program. Mayor Mullinax stated that he felt like the State would be much more stringent in the compliance of the program.

Council Member Wayne Dellinger stated that he would like to reduce the penalty, but he felt like the City has the responsibility to levy it. Council Member Bill Lutz agreed with Council Member Dellinger.

Council Members Tom Rowe and Mary Bess Lawing felt like while the \$27,900 was much too high, there still needs to be a fine for non-compliance.

Mr. Crow stated that Ms. Butler made a commitment to try to rectify the situation by paying \$2,000 to bring her up to compliance.

Council Member Dellinger made a motion to lower the penalty amount from \$27,900 to \$5,000, which is equal to \$80 a day, as opposed to the \$450.00 per day proposed. Council Member Abernethy seconded the motion.

Upon motion duly made by Council Member Dellinger, seconded by Council Member Abernethy, and with Council Members Lutz and Stedman voting against, and Council Members Rowe and Lawing voting in favor of, it was RESOLVED:

That Assessment of Penalty to Sherry Butler for Violation of the City's Soil Erosion, Sedimentation Control Ordinance be – APPROVED in the amount of \$5,000

**B. Consideration of Zoning Ordinance Text Amendment #2010-02 and
Subdivision Ordinance Text Amendment #2010-01 – Second Reading**

Assistant Planning Director Alex Fulbright stated that the Newton City Council at its October 19, 2010 meeting discussed proposed Subdivision and Zoning Ordinance text amendments, which would implement recommendations of the Eastside and Southeast Area Plans city wide.

The City Council considered this matter at the February 15, 2011 meeting and a motion was made to adopt the amendments; however, the vote failed for lack of a 2/3 majority. A second reading is now required and a simple majority vote will be required to enact the amendments as proposed. Mr. Fulbright presented draft ordinances that reflect the changes requested by the Council at the October 19, 2010 meeting. The amendments to the Subdivision Ordinance are known as case number 2010-01 and the amendments to the Zoning Ordinance are known as case number 2010-02.

Following discussion by the City Council, concerning Section 90-204 (d) Sidewalks, Greenways and other Pedestrian Facilities of the proposed Subdivision Ordinance Text Amendment, it was determined that this draft be approved with the deletion of Section (d).

Upon motion duly made by Council Member Dellinger, seconded by Council Member Rowe, it was unanimously RESOLVED:

That Ordinance 2011-5 - Amending Chapter 90 "Subdivision" of the City Code of the City of Newton, with the deletion of Section (d) *Greenways*; and Ordinance Text 2011-6 Amending Chapter 102 "Zoning" be – ADOPTED.

(Ordinances 2011-5, and 2011-6 are hereby referenced and on file in the office of the City Clerk)

ORDINANCE NO. 2011-5

**AN ORDINANCE AMENDING CHAPTER 90
"SUBDIVISION"**

OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH
CAROLINA THAT:**

Section 1:

Chapter 90, "Subdivision" of the City Code of the City of Newton shall be amended by deleting the existing **Section 90-171 (14)** in its entirety and substituting in lieu thereof, a new **Section 90-171 (14)** to read as follows:

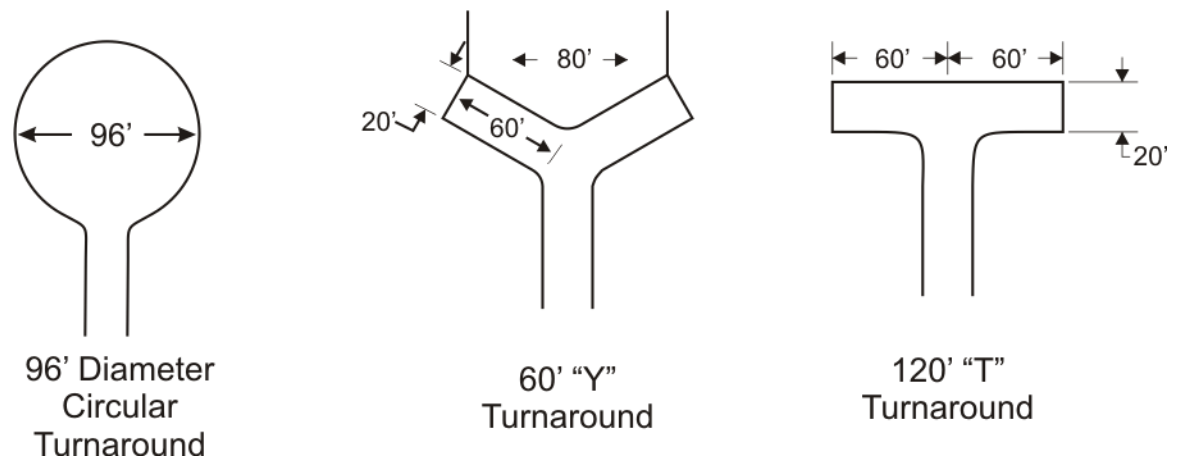
14) *Cul-de-sac streets.*

- a. *Maximum length.* Cul-de-sac streets, designed to be so permanently, shall not exceed 750 feet in length, except where unusual land configuration requires otherwise.
- b. *Turnaround.* All such cul-de-sac streets shall be provided at the closed end with a turnaround of minimum paved surface dimensions as indicated below in figure 4-1, and where lengths of over 750 feet are permitted by the SRB, the SRB may require additional turnarounds of suitable dimensions, at intermediate locations and wider pavement requirements.

1. Circular Turnaround: Minimum right-of-way radius, 55 feet, and outer-edge road surface radius, 48 feet.

2. "Y" or "T" Turnaround: Distance between the ends of the arms shall not be less than 80 feet and no more than 120 feet as measured along the centerline of the arms. The length of the arms shall be 60 feet in length with a minimum road surface width of 20 feet. Property lines at the intersection of such arms with the street shall be rounded to a radius of 20 feet in the case of a "T", and a similar rounding shall be provided at the intersection of the arms opposite the centerline of the street in the case of a "Y". Both "Y" or "T" Turnaround are generally permissible only where a cul-de-sac serves 20 dwelling units or less

FIGURE 4-1



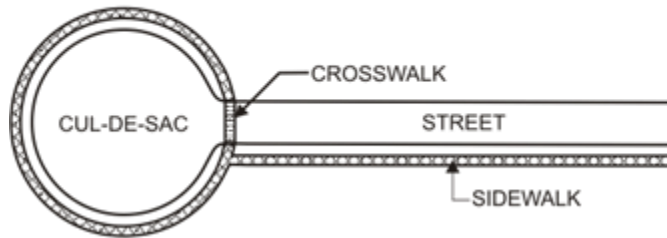
Section 2:

Chapter 90, "Subdivision" of the City Code of the City of Newton shall be amended by deleting the existing **Section 90-204. Sidewalks and other walkways** in its entirety and substituting in lieu thereof, a new **Section 90-204** titled "**Sidewalks, Greenways and other Pedestrian facilities**" to read as follows:

Sec. 90-204. Sidewalks, and other Pedestrian facilities.

(a) *Sidewalks required; minimum sidewalk width.* Sidewalks of at least 5 feet in width shall be installed along one side of all subdivision streets. The SRB may require sidewalks on both sides and/or sidewalks of widths that exceed the minimum when such requirement is in the interest of pedestrian safety. Sidewalks along cul de sac streets shall extend the full circumference of the bulb with a crosswalk at the throat as indicated on Figure 5-1.

FIGURE 5-1



(b) *Special requirements concerning pedestrian routes to schools.* Where substantial concentration of school pedestrian traffic is anticipated, sidewalks shall be provided on both sides of streets along the route of such concentration within the subdivision; provided, that:

- (1) No such sidewalk shall be required to be extended more than one-quarter mile by normal pedestrian routes from the point of access to the school grounds, except to include the full length of a block which would otherwise have such sidewalks for only a portion of its length; and
- (2) Where the pattern of proposed and potential development is such that safe, logical and convenient routing of school pedestrian traffic requires a sidewalk on only one side of the street, the SRB may permit the provision of only one sidewalk.

(c) *Walkways in lieu of sidewalks.*

- (1) Upon findings by the SRB that walkways, other than in the form of sidewalks at the edges of streets, would form safe, logical and convenient routing of pedestrian traffic, such walkways, improved in a manner found by the SRB to be appropriate to their purpose, may be substituted for such sidewalks.
- (2) Where such walkways are proposed, they shall not be approved unless the SRB finds that there are adequate provisions for their preservation and maintenance, in form and of dimensions adequate for their intended uses. These uses may include, in addition to pedestrian ways, bicycle paths or bridle paths. Where appropriate designed and improved, such walkways may also be used by service, fire and police vehicles, but shall not be used for other automobiles, trucks, motorcycles, motor scooters or the like.
- (3) Such walkways, with related uses as indicated above, may be in easements of their own or combined with utility or drainage easements, where such combination is appropriate and suitable approvals have been obtained.

Section 3:

This Ordinance shall become effective from and after the date of its adoption.

Adopted this the 1st day of March, 2011.

ORDINANCE NO. 2011-6
AN ORDINANCE AMENDING CHAPTER 102
“ZONING”

OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH
CAROLINA THAT:

Section 1:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by adding to **Section 102-290 Buffers and screening** subsection (7) and (8) to reads as follows:

(7) *Buffers adjacent to Streams.* The retention of natural vegetation shall be maximized to the extent practicable within a required buffer whenever it is adjacent to or contains a stream or drainage feature.

(8) *Topography.* In situations where the topography would render most practical required screening non-effective, the Planning Director may allow the screening to be located outside of the required buffer and placed in a location that will enable the screening to be effective in meeting the intent of this section.

Section 2:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by deleting the existing **Section 102-299. Manufactured home appearance criteria.** in its entirety and substituting in lieu thereof, a new **Section 102-299. Manufactured home appearance criteria.** to read as follows:

In any residential district where manufactured homes are permitted, the following criteria shall be used in determining the classification of manufactured homes:

(1) *Class A manufactured homes*

- (a) *Length-width ratio.* Class A manufactured homes shall have a minimum width of 18 feet, shall have a length not exceeding four times its width, with length measured along the longest axis and width measured perpendicular to the longest axis at the narrowest part; the towing apparatus, wheels, axles, and transporting lights shall be removed and shall not be included in length and width measurements.
- (b) *Chassis and tongue removal.* The towing tongue and undercarriage of the chassis, including wheels and axles, shall be removed upon placement upon a permanent foundation for the unit.
- (c) *Foundation.* The Class A manufactured homes shall be set up in accordance with the standards established by the State Department of Insurance. In addition, a continuous, permanent masonry foundation or masonry curtain wall constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings, un-pierced except for required ventilation and access, shall be installed under the perimeter of the manufactured home.

- (d) *Exterior finish.* The exterior siding shall consist of one or more of the following: Vinyl or aluminum lap siding (whose reflectivity does not exceed that of a flat white paint), cedar or other wood siding, wood grain, weather-resistant press board siding, stucco siding, brick or stone which shall be comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.
- (e) *Roof pitch.* The pitch of the roof shall have a minimum vertical rise of three feet for each 12 feet of horizontal run, the roof shall be finished with a Class C or better roofing material that is commonly used in standard residential construction, and all roof structures shall provide an eave projection of no less than six inches, which may include a gutter.
- (f) *Steps, platforms, porches, ramps and other access required.* All manufactured homes shall be equipped with permanent steps, porches, entrance platforms, ramps and other means of entrance and exit to and from the manufactured home and shall be installed or constructed in compliance with the standards of the North Carolina State Building Code, and anchored securely to the ground.

(2) *Class B and C manufactured homes.*

- (a) *Length-width ratio.* Class B or C manufactured homes shall have no minimum length and width ratio.
- (b) *Chassis and tongue removal.* The towing tongue and undercarriage of the chassis, including wheels and axles, shall be removed upon placement upon a permanent foundation for the unit.
- (c) *Foundation.* Class B or C manufactured homes shall be set up in accordance with the standards established by the State Department of Insurance. In addition, a continuous, permanent masonry foundation or masonry curtain wall shall be constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings, un-pierced except for required ventilation, and access shall be installed under the perimeter of the manufactured home. Class B or C manufactured homes setup in established manufactured home parks shall be allowed to have a non-masonry curtain wall constructed with appropriate material.
- (d) *Exterior finish.* Exterior siding shall consist of one or more of the following: vinyl or aluminum lap siding (whose reflectivity does not exceed that of a flat white paint), cedar or other wood siding, wood grain, weather-resistant press board siding, stucco siding, brick or stone which shall be comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.
- (e) *Roof pitch.* The pitch of the roof shall have a minimum vertical rise of three (3) feet for each twelve (12) feet of horizontal run, the roof shall be finished with a Class C or better roofing material that is commonly used in standard residential construction, and all roof structures shall provide an eave projection of no less than six inches, which may include a gutter.
- (f) *Steps, platforms, porches, ramps and other access required.* All manufactured homes shall be equipped with permanent steps, porches, entrance platforms, ramps and other means of entrance and exit to and from the manufactured home and shall be installed or constructed in compliance with the standards of the North Carolina State Building Code, and anchored securely to the ground.

Section 3:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by creating a new section to be numbered **Section 102-307**, titled “**Pedestrian Access and Circulation**”, to read as follows:

- (1) *Pedestrian design requirements.* For multi-tenant building/parcel projects, the site plan shall include provisions for pedestrian-scale amenities, which may include benches, picnic tables, pocket parks, courtyards, plazas, water attractions and trash receptacles. An area shall be reserved for pedestrian use and/or open space and shall be improved and maintained accordingly. Such areas may include covered malls for general pedestrian use, exterior walkways/crosswalks, outdoor seating areas and the like where the facilities are available for common use by employees and visitors. Required buffer areas and setback yards as well as improved deck and roof areas may be used to meet this requirement.
- (2) *Heavy traffic generators.* Service stations, fast food restaurants and similar uses, if provided, shall be so located that operations do not block pedestrian or traffic flows in other parts of the development.
- (3) *Location of loading zones and maintenance areas.* Loading zones where customers pick up goods shall be located and arranged so as to prevent interference with pedestrian movement within the development. Facilities and access routes for deliveries, servicing, and maintenance shall be located and arranged, so as to prevent interference with pedestrian traffic within the site.
- (4) *Pedestrian travel.* All buildings or building clusters within the development shall be connected with linkages other than roads (sidewalks, bikeways and walking paths). When feasible, as determined by the Planning Director or designee, linkages shall be provided between adjacent existing developments and/or shall continue to the site property line to provide access to adjacent future developments. Pedestrian access may be provided at any suitable locations, but shall, where practicable, be separated from vehicular access points in order to reduce congestion, marginal friction and hazards, except where signalization is used in such a manner as to control pedestrian and vehicular movements safely.
- (5) *Street Frontages.* Sidewalks shall be installed along all street frontages.
- (6) *Exceptions.* Single-family and two-family dwellings are exempt from this subsection.

Section 4:

Chapter 102, “Zoning” of the City Code of the City of Newton shall be amended by creating a new section to be numbered **Section 102-308**, titled “**Minimum Building Appearance Criteria for Non-Residential Building**”, to read as follows:

- (1) *Roof Pitch.* Roof pitches less than 3:12 and flat roofs will require a parapet wall. A pitched roof of greater than 3:12 shall be profiled by eaves an minimum of 12 inches from the building face or with a gutter.
- (2) *Façade Treatment.* Architectural elements such as but not limited to windows and doors, bulkheads, masonry piers, transoms, cornice lines, windows hoods, awnings canopies, and other

similar details shall be used on all facades which face and/or are visible at the time of construction from public or private street rights-of-way. Building wall offsets, including projections, recesses, columns, buttresses and changes in floor level shall be used in order too: add architectural interest and variety; relieve the visual effect of a single, long wall; and subdivide the wall into human size proportions. Similarly, roofline offsets should be provided to lend architectural interest and variety to the massing of a building and to relieve the effect of a single long roof line.

- (3) *Primary entrances.* The primary entrance for a building shall face a public or private street and include at least three of the following elements:
 - a. canopies or porticos
 - b. roof overhangs
 - c. recesses/projections
 - d. raised corniced parapets over the door
 - e. peaked roof forms
 - f. arches
 - g. outdoor patios
 - h. display windows
 - i. architectural details such as tile work and moldings that are integrated into the building structure and design
 - j. integrated planters or wing walls that incorporate landscape areas and /or place for sitting
- (4) *Service entrances and access areas.* Service entrances and access areas shall not be visible from a public street.
- (5) *Temporary Walls.* Temporary walls or “knock out” walls constructed of architectural metal siding or other similar material will be allowed provided that the building has approved plans indicating future expansion and that substantial preparation will be done indicating the intentions to expand. This preparation should include but not be limited to grading for the future expansion, properly sized utilities to allow for the future expansion as well as other indicators that would indicate the intentions of expansion.
- (6) *Colors.* Colors used for exterior surfaces shall be harmonious with surrounding development and shall visually reflect the traditional concept of the City. Color shades shall be used to facilitate blending into the adjacent built environment. Building trim may feature brighter colors as an accent material. The use of high-intensity or metallic colors is not allowed except for accent purposes. The use of fluorescent, day glow, or neon colors shall be prohibited as a predominate wall color. Variations in color schemes are encouraged in order to articulate entryways and public amenities so as to give greater recognition to these features.

Section 5:

This Ordinance shall become effective from and after the date of its adoption.

8. NEW BUSINESS:

A. DNDA 2010 Year-End Report

Jeremy Petty, DNDA Chairperson, thanked the Council for the opportunity to give the Year-End Report of the Downtown Newton Development Association. Mr. Petty gave a brief overview of last year's projects and included goals for the coming year. Some of these goals included promoting the façade grant program developing a Newton brand, implementing the Streetscape Master Plan, completing another makeover project, preparing a "business resource" reference card, and publishing a 2011-2012 Soldiers Reunion calendar. Mr. Petty stated that these goals were established at the DNDA Annual Planning Workshop held on Saturday February 19, 2011. He also stated that the DNDA was represented at the NC Main Street Annual Conference in Shelby on January 27th, where Bob and Michele McCreary were honored as Newton's 2010 Main Street Champions.

Mayor Mullinax thanked Mr. Petty for all the report, and for all his hard work as Chairperson of the DNDA.

B. Consideration of a Resolution Exempting the City of Newton from North Carolina General Statute 14-234 (Public Officers or employees benefiting from public contracts; exceptions)

Council Member Wayne Dellinger recused himself from New Business Item 8B.

City Manager Todd Clark explained that the City of Newton has been asked to host a North Carolina League of Municipalities Regional Meeting on April 13, 2011. City Staff would like to use the Newton Expo which is owned and operated by Council Member Wayne Dellinger. In accordance with North Carolina General Statute 14-234, however, no city council member who is involved in making or administering contracts on behalf of a city may derive a direct benefit from any contract entered into between him/her and the city unless the city meets specific exemption requirements as set forth in Subdivision (a)(1) of this statute. Mr. Clark stated that this Resolution would exempt and enable the City of Newton to rent Council Member Dellinger's facility for the purpose of the North Carolina League of Municipalities meeting in April. Mr. Clark recommended approval of this Resolution.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Anne Stedman, it was unanimously RESOLVED:

That Resolution 8-2011 - Exempting the City of Newton from North Carolina General Statute 14-234 be – ADOPTED.

(Resolution 8-2011 is hereby referenced and on file in the office of the City Clerk)

RESOLUTION # 8-2011

**A RESOLUTION EXEMPTING THE CITY OF NEWTON
FROM NORTH CAROLINA GENERAL STATUTE § 14-234**

WHEREAS, North Carolina General Statute § 14-234 (a) (1) sets forth that no public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in NCGS § 14-234, or otherwise allowed by law; and

WHEREAS, North Carolina General Statute § 14-234 (a1) (1) defines a “public officer” as an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency; and

WHEREAS, Cities having a population of no more than 15,000 according to the most recent official federal census may be exempted from Subdivision (a) (1) of NCGS § 14-234 if the following actions are taken:

- 1) The proposed contract(s) between the city and one of its officials must be approved by a specific resolution of the governing body adopted in an open and public meeting and the action must be recorded in the city council's minutes;
- 2) The amount does not exceed forty thousand (\$40,000) for goods and services within a 12-month period;
- 3) The official entering into the contract with the unit or agency cannot participate in any way or vote;
- 4) The total amount of the contract(s) with each official is specifically noted in the audited annual financial statement of the city; and
- 5) The City Council must post in a conspicuous place in city hall a list of officials with whom contracts have been made, briefly describes the subject matter of the contracts, and shows the total contract amounts within the preceding 12 months; all of which must be updated on a quarterly basis.

WHEREAS, the City of Newton proposes to rent a facility from a City of Newton officer for a public purpose.

NOW THEREFORE, BE IT RESOLVED, that the Newton City Council adopt this resolution with the intent of renting the Newton Expo, owned and operated by Council Member Wayne Dellinger, for the purpose of hosting one event on the date of April 13, 2011.

Adopted this the 1st day of March 2011.

9. CITY MANAGER’S REPORT:

City Manager Todd Clark reported on the following:

- Culvert projects
- AT&T Water Tank Corral should start in three weeks
- Asphalt Patch Work
- South Newton 24kv conversion bid opening – March 3, 2011
- Renovations to the landscaping at City Hall, estimated price around \$600.
- WYAA Midget Girls League to start the first week of March
- Budget Calendar drafted – minimal budget work sessions this year due to Department Heads’ work on CIP
- IT Director Jason Clay stated that he has an example of the new web page if anyone would like to see it – it should be finished in approximately 4 weeks
- Strategic Plan – ElectriCities
- Department of Cultural Resources 2/21/11 letter proposed
- ElectriCities CEO meeting is scheduled for March 8, 2011 at 5:00 p.m.
March 15, 2011 at 6:00 p.m. work session – Water/Sewer rates structure
- March 3, 2011 ElectriCities regional meeting at 5:30 p.m. HMCC

- Human Relations Committee meeting, March 3, 2011, 5:30 p.m.
- West 2nd Street Sidewalk Replacement Streetscape Plan

10. QUESTIONS AND COMMENTS FROM MAYOR AND COUNCIL:

None.

11. ADJOURNMENT:

Upon motion duly made by Mayor Pro Tem Anne Stedman, seconded by Council Member Robert C. Abernethy, Jr., the meeting was RECESSED at 9:01 p.m.

Robert A. Mullinax, Mayor

Amy S. Falowski, City Clerk

